

## EXHIBIT 1

### Notice of Conditional Settlement

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Attorneys for Claimant-Plaintiff  
FEDERAL INSURANCE COMPANY

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

FEDERAL INSURANCE COMPANY  
Claimant-Plaintiff,

vs.

CALDERA MEDICAL, INC., and  
DENISE M. FLANIGAN, ROSIE JEAN  
BATES, TAMMY L. MCILROY,  
BRENDA DEYO, SUSAN STONE,  
KIMBERLY DURHAM, SHARON PEER,  
ELIZABETH BAILEY, BARBARA COE,  
DOREEN ESPARZA, CLARA PERELKA,  
PEGGY GRUBBS, CONNIE  
WILLIAMSON, CHRISTINE  
MATHEWS, KATRINA BAKER, DAWN  
BURNHAM, NANCY ROBERTS,  
GLENDA THORNE, BENELLA  
OLTREMARI, PHYLLIS W. BROWN,  
JOANNE MONGEAU, SYBIL  
WASHINGTON, and CELINES  
RAMIREZ, and all others similarly situated

Claimants- Defendants.

CASE NO. 2:15-cv-00393-SVW-PJW

Honorable Stephen V. Wilson

**NOTICE OF CONDITIONAL  
SETTLEMENT**

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Los Angeles, CA 90071

As the parties previously advised the Court, on July 22, 2015, a mediation was held in the above captioned matter. The participants were counsel and representatives of Caldera Medical, Inc. ("Caldera"), Federal Insurance Company ("Federal") and all claimants who have filed suit or entered into tolling agreements, including those in the Los Angeles Superior Court JCCP 4733 litigation and Multi-District Litigation in the Southern District of West Virginia ("Claimants"). The parties to the mediation have all accepted a Mediator's Proposal of settlement, which could resolve all litigation related to Caldera. American Medical Systems, Inc. is not a party to the settlement. The settlement, which will be documented promptly is conditioned on, among other things:

1. Certification of a class or classes, by this Court, under Rule 23(b)(1) of the Federal Rules of Civil Procedure;

2. An order of this Court staying all litigation against Caldera and other entities who are insureds or indemnitees under the insurance policies issued by Federal to Caldera, pending completion of the settlement process; and

3. Approval, if appropriate, after notice and hearing, of the settlement by this Court.

Dated: July 27, 2015

Respectfully submitted,

LOCKE LORD LLP

By: /s/ Lilian M. Khanjian

Michael F. Perlis

Richard Johnson

Lilian M. Khanjian

*Attorneys for Claimant-Plaintiff*

*FEDERAL INSURANCE COMPANY*

## EXHIBIT 2

Joint Supplemental Submission In Support of Unopposed  
Motion to Stay and Enjoin

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JOANNE MONGEAU, SYBIL  
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RAMIREZ, and all others similarly situated

Claimants- Defendants.

CASE NO. 2:15-cv-00393-SVW-PJW

Honorable Stephen V. Wilson

**JOINT SUPPLEMENTAL  
SUBMISSION IN SUPPORT OF  
THE NOW-UNOPPOSED MOTION  
TO STAY AND ENJOIN  
PROCEEDINGS**

**DATE: APRIL 27, 2015**

**TIME: 1:30 P.M.**

**PLACE: COURTROOM 6**

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Los Angeles, CA 90071

As the parties previously notified the Court, on July 22, 2015, Federal Insurance Company (“Federal”), Caldera Medical, Inc. (“Caldera”) and settlement liaison counsel on behalf of all 2,184+ claimants who have filed suit and potential claimants, including those in the Los Angeles Superior Court JCCP 4733 litigation, Multi-District Litigation in the Southern District of West Virginia and any State and/or U.S. court (“Claimants”) (collectively “the Parties”) participated in a mediation with mediator Robert Kaplan.<sup>1</sup> Pursuant to a Mediator’s Proposal, and subject to this Court’s approval, the Parties have reached a settlement in principle subject to certain terms and conditions. The settlement, which will be documented promptly, is conditioned on, among other things, an order of this Court staying all litigation against Caldera and any other entities insured or contractually indemnified under the insurance policies issued by Federal to Caldera (“Federal Policies”), involving alleged injuries caused by a Caldera transvaginal mesh product (meaning, Caldera products for female incontinence or prolapse), as detailed below, pending completion of the settlement process.

On March 30, 2015, Federal filed a Motion to Stay And Enjoin Proceedings (the “Motion”). On April 24, 2015, the Court denied the Motion. In denying the Motion, the Court noted that its primary concern was that a stay would enjoin Claimants from establishing their claims of liability against the insured(s) and others. Claimants no longer oppose the stay and in fact now jointly request a stay of all pending litigation. As the Parties have conditionally agreed to a settlement that resolves and liquidates, among others, all of Claimants’ claims against Caldera – and establishes a defined fund of insurance proceeds out of which all claims will be paid – Claimants believe that a stay now may and should be entered pursuant to 28 U.S.C. § 2361 and *State Farm Fire & Casualty Co. v. Tashire*, 386 U.S. 523 (1967).

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<sup>1</sup> While American Medical Systems, Inc. is not a party to the current settlement, it had previously expressed its agreement with the stay.

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1 A stay is appropriate and essential at this time, pending completion of the  
2 settlement process. When the settlement process is completed, the stay would be  
3 automatically lifted. The Parties agree that failure to grant the stay will terminate the  
4 settlement.

5 A condition of settlement mandates that a certain capped portion of the  
6 Policies' Limits be reserved for fees and costs incurred in the defense of Caldera and  
7 other insureds/indemnitees under the Federal Policies in connection with the  
8 underlying litigations. Any remaining portion of this sum shall revert to settlement  
9 proceeds for distribution to the Claimants. The Parties including the Claimants agree  
10 that a stay is necessary to prevent erosion of the settlement fund. Moreover, to the  
11 extent the totality of defense costs exceeds this capped sum, the settlement may be  
12 terminated.

13 Thus, the Parties jointly request that the Court grant the following relief,  
14 pursuant to 28 U.S.C. § 2361, pending completion of the settlement process, i.e., full  
15 execution of settlement documents and releases, final certification of the settlement  
16 class(es) and approval by the Court of the settlement:

17 1. A stay of all litigation and proceedings in any State and/or United States  
18 Court against Caldera and any other party insured or contractually indemnified under  
19 the Federal Policies, involving alleged injuries caused by a Caldera transvaginal mesh  
20 product;

21 2. An injunction preventing any and all potential claimants including, but  
22 not limited to, those with tolling agreements, from instituting or prosecuting any  
23 lawsuit, arbitration or any proceeding against Caldera and any other party insured or  
24 contractually indemnified under the Federal Policies, involving alleged injuries caused  
25 by a Caldera transvaginal mesh product; and,

26 3. An injunction preventing any and all plaintiffs and/or claimants from  
27 levying or otherwise seeking payment on any settlement or judgment against Federal,  
28 Caldera and any other party insured or contractually indemnified under the Federal

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1 Policies, and requiring that any liquidated claim be presented to this Court for  
2 potential payment, for those claims involving alleged injuries caused by a Caldera  
3 transvaginal mesh product.

4 With respect to any insured other than Caldera and any indemnitee under the  
5 Federal Policies, the requested stay would apply only to those portions of cases  
6 involving a Caldera transvaginal mesh product. To the extent that any of the cases, of  
7 which the Parties request a stay, involve claims against insureds or indemnities that  
8 are not covered under the Federal Policies or that do not involve a Caldera product,  
9 such portions of those cases may proceed as the relevant Court deems appropriate at  
10 its discretion.

11 Should the Court request it, the Parties can provide a list of the specific cases to  
12 which the requested stay should apply.

13 The Court can grant the previously denied Motion since Courts possess inherent  
14 power and control to reconsider and modify their interlocutory orders prior to final  
15 adjudication of all claims against all parties. Fed. R. Civ. Proc. 54(b); *See also*, e.g.,  
16 *Balla v. Idaho State Board of Corrections*, 869 F.2d 461 (9th Cir. 1989) (citing  
17 *Marconi Wireless Telegraph Co. v. United States*, 320 U.S. 1, 47-48 (1943)); *John*  
18 *Simmons Co. v. Grier Brothers Co.*, 258 U.S. 82, 88 (1922).

19 Inasmuch as the Parties including the Claimants agree that the foregoing relief  
20 is appropriate and suitable for purposes of effectuating a final settlement between the  
21 Parties, the Parties hereby jointly request that the Court grant the Motion and the  
22 foregoing relief. Therefore, the Parties hereby jointly renew the now-unopposed  
23 Motion to Stay and Enjoin Proceedings (Doc. No. 75). The Parties ask that the Court  
24 disregard any and all previous oppositions to the Motion as they are hereby  
25 withdrawn.

26 Attached hereto as Exhibit A is an as-filed copy of the Motion incorporated  
27 herein by reference.  
28



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300 South Grand Avenue, Suite 2600  
Los Angeles, CA 90071

1 Dated: August 3, 2015

Respectfully submitted,

2 LOCKE LORD LLP

3  
4 By: /s/ Lilian M. Khanjian

5 Michael F. Perlis

6 Richard Johnson

7 Lilian M. Khanjian

8 *Attorneys for Claimant-Plaintiff*

9 *FEDERAL INSURANCE COMPANY*

# EXHIBIT A

Case 2:15-cv-00393-SVW-PJW Document 75 Filed 03/30/15 Page 1 of 13 Page ID #:1392

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9 Attorneys for Claimant-Plaintiff  
 10 FEDERAL INSURANCE COMPANY

11 UNITED STATES DISTRICT COURT  
 12 CENTRAL DISTRICT OF CALIFORNIA

13 FEDERAL INSURANCE COMPANY

14 Claimant-Plaintiff,

15 vs.

16 CALDERA MEDICAL, INC., and DENISE  
 17 M. FLANIGAN, ROSIE JEAN BATES,  
 18 TAMMY L. MCILROY, BRENDA DEYO,  
 19 SUSAN STONE, KIMBERLY DURHAM,  
 20 ELAINE TACK, SHARON PEER,  
 21 ELIZABETH BAILEY, BARBARA COE,  
 22 DOREEN ESPARZA, CLARA PERELKA,  
 23 PEGGY GRUBBS, CONNIE  
 24 WILLIAMSON, CHRISTINE MATHEWS,  
 25 KATRINA BAKER, DAWN BURNHAM,  
 26 NANCY ROBERTS, GLENDA THORNE,  
 BENELLA OLTREMARI, PHYLLIS W.  
 BROWN, JOANNE MONGEAU, SYBIL  
 WASHINGTON, and CELINES  
 RAMIREZ, and all others similarly situated

27 Claimants- Defendants.  
 28

CASE NO. 2:15-cv-00393-SVW-PJW

Honorable Stephen V. Wilson

**FEDERAL INSURANCE  
 COMPANY'S NOTICE OF  
 MOTION AND MOTION TO  
 STAY AND ENJOIN  
 PROCEEDINGS;  
 MEMORANDUM OF POINTS  
 AND AUTHORITIES IN  
 SUPPORT THEREOF**

**DATE: April 27, 2015**

**TIME: 1:30 P.M.**

**PLACE: Courtroom 6**

[Filed concurrently with: Declaration  
 of Lilian M. Khanjian and [Proposed]  
 Order]

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Los Angeles, CA 90071

**TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

**PLEASE TAKE NOTICE THAT** on April 27, 2015 at 1:30 p.m. in Courtroom 6 of the above-entitled court, located at 312 North Spring Street, Los Angeles, California 90012, Claimant-Plaintiff Federal Insurance Company ("Federal") will and hereby does move this Court for an order to stay and enjoin all proceedings affecting the insurance policies issued by Federal to Caldera Medical, Inc. ("Caldera"), Policy No. 7499-85-32 SFO (the "Policies"), for a period of six months. Specifically, Federal requests the following relief:

1. A stay of all litigation and proceedings in any State and/or United States Court against any party insured or contractually indemnified under the Policies for a period of six months;

2. An injunction preventing any and all potential claimants, including but not limited to those with tolling agreements, from instituting or prosecuting any lawsuit, arbitration or any proceeding against any party insured or contractually indemnified under the Policies for a period of six months; and,

3. An injunction preventing any and all plaintiffs and/or claimants from levying or otherwise seeking payment on any settlement or judgment against Federal, any party insured or contractually indemnified under the Policies, and requiring that any liquidated claim be presented to this Court for potential payment.

This motion is made pursuant to the Federal Interpleader Act, 28 U.S.C. § 2361 on the grounds that allowing any action to commence or proceed that could cause the immediate expenditure of Policy proceeds and threaten the orderly disposition of this action and result in an inequitable distribution of the Policies. Accordingly, under the referenced statutes, this Court has the power to enjoin all claimants herein (and any future claimants) from pursuing any legal action in any court that would cause payment of Policy proceeds, and to require that any liquidated claim be presented to this Court for potential payment.

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1 This motion is made following the conference of counsel pursuant to L.R. 7-3  
2 which took place on March 20 and 23, 2015.

3 This motion is based upon this Notice, the attached Memorandum of Points and  
4 Authorities, the Declaration of Lilian M. Khanjian submitted herewith and any  
5 exhibits attached thereto, and upon such other and further matters as may be presented  
6 at the time of hearing and if further made upon such matters as must or may be  
7 judicially noticed, including all pleadings and papers on file herein.

8  
9 Dated: March 30, 2015

Respectfully submitted,

LOCKE LORD LLP

11  
12 By: /s/ Lilian M. Khanjian

13 Michael F. Perlis

14 Richard R. Johnson

15 Lilian M. Khanjian

16 *Attorneys for Claimant-Plaintiff*

17 *FEDERAL INSURANCE COMPANY*  
18  
19  
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Federal Insurance Company (“Federal”) brought this action in the nature of  
 4 interpleader naming its insured Caldera Medical, Inc. (“Caldera”) and representatives  
 5 of two proposed defendant classes. Over 2,000 claims, that are either currently being  
 6 litigated or are subject to tolling agreements, spanning over various jurisdictions have  
 7 been asserted against Caldera, which Federal is informed seek in excess of \$1 billion  
 8 (“the Caldera Claims”). Federal is informed that its policy proceeds are Caldera’s  
 9 primary source of funds from which to pay these claims. Federal’s remaining policy  
 10 proceeds total approximately \$18,613,109, which Federal has posted by way of bond  
 11 in this Court. Given that the claimants’ and potential claimants’ only source of relief  
 12 will dwindle with each settlement and continuing litigation, Federal now requests  
 13 appropriate interim injunctive relief.

14 While reserving its rights to dispute coverage based on a number of coverage  
 15 defenses under the relevant policies, Federal has provided a complete defense to  
 16 Caldera for the claims, spent over \$5,300,000 in defense fees/costs and paid  
 17 \$1,000,000 towards settlement at Caldera’s request. Both the defense expenses and  
 18 settlement proceeds have reduced the policy limits. There are currently hundreds of  
 19 cases being litigated which are cutting away at the policy proceeds and threaten  
 20 inequitable distribution of the Policies’ depleting limits. There is currently only  
 21 approximately \$18,613,109 potentially available to satisfy the totality of claims  
 22 against Caldera, and others who may be entitled to coverage under the Policies as  
 23 insureds or contractual indemnitees, subject to coverage issues and application of  
 24 deductibles, and with each claim that Federal defends, the policies’ proceeds diminish.  
 25 With such limited available policy limits, individual claimants are encouraged to  
 26 vigorously litigate their rights and rush to judgment, beating out the slower claimants’  
 27 chances of adequate compensation.

28 ///

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1 Federal now brings this motion to stay and enjoin proceedings for an interim  
2 six-month period. Precisely, Federal requests that this Court stay and enjoin all  
3 existent and future proceedings against any party insured or contractually indemnified  
4 by the policies to the extent such proceedings would serve to reduce the available  
5 policy proceeds. This injunction would minimize erosion of the policy limits for  
6 defense expenditures and maximize proceeds for potential settlement. This time  
7 period will allow this Court and the parties to do the following:

- 8 (1) determine the amount of the insurance proceeds available to the claimants;
- 9 (2) create a procedure by which liquidated claims can obtain relief from the  
10 insurance policies;
- 11 (3) establish a procedure by which Federal pays defense costs on behalf of  
12 insureds and other parties entitled to coverage under the policies;
- 13 (4) explore settlement of the underlying claims through an additional mediation  
14 session; and,
- 15 (5) potentially propose a settlement offer directly to the claimants.

16 After the six-month stay, the parties and this Court can revisit the issues  
17 presented by this motion and decide whether further injunctive relief is necessary.<sup>1</sup>

## 18 **II. STATEMENT OF FACTS**

### 19 **A. THE UNDERLYING CLAIMS**

20 Caldera markets, distributes and/or sells surgical mesh products used in a  
21 variety of different functions, including a transvaginal mesh implant designed to treat  
22 pelvic organ prolapse or stress urinary incontinence. No later than October 20, 2008,  
23 the U.S. Food and Drug Administration issued a Public Health Notification regarding  
24 complications of transvaginally implanted Pelvic Organ Prolapse Mesh and Stress  
25 Urinary Incontinence Slings. This notification precipitated numerous claims for  
26

27 <sup>1</sup> While not a party to this action at this time, American Medical Systems, Inc.  
28 (“AMS”) has expressed its support for and complete agreement with a stay of all  
litigation and proceedings of the underlying cases.

1 injuries resulting from these mesh products against Caldera and other manufacturers  
2 of similar products. To Federal's knowledge, there are currently at least 2,184  
3 claimants who are either litigating claims or have entered into tolling agreements  
4 preserving claims against Caldera alleging injuries as a result of being implanted with  
5 one or more Caldera products (collectively referred to as the "Caldera Claims").  
6 (Khanjian Decl. ¶ 2).

7 **B. THE POLICIES**

8 Federal issued Life Science Insurance Program policies, each numbered Policy  
9 No. 7499-85-32 SFO, to Caldera for the following policy periods: (1) August 1, 2008  
10 to August 1, 2009 ("2008 Policy"); (2) August 1, 2009 to August 1, 2010 ("2009  
11 Policy"); (3) August 1, 2010 to November 1, 2011 ("2010 Policy"); and (4) November  
12 1, 2011 to November 1, 2012 ("2011 Policy"). (Khanjian Decl. ¶ 3). (The 2008, 2009,  
13 2010 and 2011 Policies are collectively referred to herein as "the Policies" and have  
14 been attached as Exhibits A-D, respectively, to Federal's Complaint. See Document  
15 No. 10 of the Docket.). The Policies are "claims-made" policies that afford coverage  
16 to Caldera subject to their terms and conditions. (Doc. No. 10 of the Docket). The  
17 Policies further provide that Federal shall have the right and duty to defend any suit  
18 against Caldera seeking damages in accordance with the Policies' terms. *Id.* The  
19 2008 Policy has a \$10 million Limit of Liability subject to a \$50,000 per occurrence  
20 deductible (also subject to the Batch Clause), the 2009 Policy has a \$10 million Limit  
21 of Liability subject to a \$50,000 per occurrence deductible (also subject to the Batch  
22 Clause), the 2010 Policy has a \$10 million Limit of Liability subject to a \$50,000 per  
23 event deductible, and the 2011 Policy has a \$5 million Limit of Liability subject to a  
24 \$75,000 per claim deductible. *Id.* In addition, the Policies' terms potentially provide  
25 coverage to other persons or entities who are the subject of related litigation as to  
26 whom the stay would also apply solely to the extent of their potential coverage under  
27 the Policies.

28 ///



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1 While it is disputed as to which policies provide coverage, if any, it is only  
2 contended that at most \$25 million in coverage is potentially available from which,  
3 according to the terms of the Policies, defense costs and settlements paid must be  
4 subtracted. (Khanjian Decl. ¶ 4). In connection with the Caldera Claims, Federal has  
5 funded over \$6,386,891 in defense and indemnity payments under the Policies,  
6 without collecting any deductible payments from Caldera. (Khanjian Decl. ¶ 5). The  
7 policy limits now amounts to approximately \$18,613,109 and, due to defense costs, is  
8 decreasing each day. (Khanjian Decl. ¶ 6).

### 9 C. THE COMPLAINT

10 As a result of the numerous competing demands for the remaining portions of  
11 the policy limits, on January 20, 2015 Federal filed this action in interpleader.  
12 (Khanjian Decl. ¶ 7). The Interpleader Complaint named Caldera and 24 claimants  
13 individually as defendants, and identified two classes Federal would seek to certify.  
14 *Id.* This interpleader action does not seek resolution of the Caldera Claims, but is  
15 instead concerned with adjudicating the parties' respective rights to the policy limits.  
16 As such, soon after filing the Complaint, Federal posted a bond in the amount of  
17 \$18,613,109 with this Court. (Khanjian Decl. ¶ 8). Federal is not attempting to have  
18 this Court determine any of the merits of the underlying tort claims by way of this  
19 interpleader action.

### 20 D. STATUS OF TRANSVAGINAL MESH PRODUCT CASES

21 The underlying plaintiffs in the Transvaginal Mesh Medical Product Cases  
22 pending in Los Angeles County Superior Court, JCCP 4733, to which Caldera is a  
23 party, had requested a lift of the stay on litigation in that case. (Khanjian Decl. ¶ 9).  
24 On March 11, 2015, Judge William F. Highberger issued a tentative ruling lifting the  
25 stay on litigation. (Khanjian Decl. ¶ 10). There will be further briefing on the  
26 tentative ruling, which Caldera and AMS have opposed. *Id.* A further hearing will be  
27 held on this issue on April 9, 2015. *Id.* Once the stay is lifted, Federal's policy limits  
28 will begin to erode at a rapid pace. Caldera's defense costs will undoubtedly increase

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1 at an exceptionally rapid pace and Federal will be faced with having to satisfy its  
2 obligation to fund Caldera's defense. (Khanjian Decl. ¶ 11). Moreover, Federal must  
3 also satisfy its obligations to pay for the defense of any other parties including, but not  
4 limited to contractual indemnitees, entitled to it under the Policies. (Khanjian Decl. ¶  
5 12). Federal thus filed this motion to stay all actions in order to equitably determine  
6 the outstanding coverage issues, minimize erosion of the policy limits for defense  
7 expenditures, maximize proceeds for settlement and otherwise allow for settlement to  
8 occur.

### 9 **III. ARGUMENT**

#### 10 **A. THE COURT MAY ENJOIN THE UNDERLYING ACTIONS.**

11 28 U.S.C. § 2361 ("Section 2361") provides federal courts broad statutory  
12 power to restrain parties from undermining the interpleader process. *Star Ins. Co. v.*  
13 *Cedar Valley Express, LLC*, 273 F. Supp. 2d 38, 42 (D.D.C. 2002); *see also First*  
14 *Interstate Bank of Oregon, N.A. v. U.S. by & through IRS*, 891 F. Supp. 543, 546 (D.  
15 Or. 1995); *U.S. v. Major Oil Corp.*, 583 F.2d 1152, 1157 (10th Cir. 1978) (A court's  
16 injunctive power, under Section 2361, is "nationwide and is intended to halt any  
17 proceeding the court deems inconsistent with the interpleader proceeding.").  
18 Primarily, the interpleader process is concerned with preventing inconsistent  
19 determinations and inequitable distributions of the interpleaded funds. *See In re*  
20 *Republic of Philippines*, 309 F.3d 1143, 1153 (9th Cir. 2002); *Aetna Life Ins. Co. v.*  
21 *Bayona*, 223 F.3d 1030, 1034 (9th Cir. 2000). Accordingly, where an action is  
22 commenced pursuant to 28 U.S.C. § 1335, a court may temporarily or permanently  
23 enjoin any person from "instituting or prosecuting **any proceeding** in any State or  
24 United States court affecting the property, instrument or obligation involved in the  
25 interpleader action until further order of the court." 28 U.S.C. § 2361 (emphasis  
26 added); *Star Ins. Co.*, 273 F. Supp. 2d at 42 ("The Federal Interpleader Act authorizes  
27 a U.S. District Court to enter both preliminary and permanent injunctions restraining  
28 claimants from instituting or prosecuting any proceeding in any state or federal court

1 affecting the subject matter of an interpleader action.”); *Beaufort Nav., Inc. v. Med*  
 2 *Africa Line S.P.A.*, 624 F. Supp. 229, 232 (S.D.N.Y. 1985) (holding that an injunction  
 3 could bar a claimant from attaching interpleaded funds in a separate action).<sup>2</sup>

4 Federal has brought this action pursuant to Section 1335, requesting that this  
 5 Court determine applicable rights under the Policies. Federal has properly alleged  
 6 jurisdiction under Section 1335 and has posted a bond in the remaining amount of the  
 7 policy limits in the Court’s registry. Consequently, this Court can exercise its power  
 8 under Section 2361 to enjoin any proceedings that affect or could affect the policy  
 9 limits.<sup>3</sup>

10 **B. AN INJUNCTION IS PROPER BECAUSE THE PRINCIPAL**  
 11 **RELIEF FOR THE CALDERA CLAIMS IS THE REMAINING**  
 12 **AMOUNT OF THE POLICY LIMITS.**

13 A court should exercise its discretion to enjoin other proceedings under Section  
 14 2361 liberally. *First Interstate Bank*, 891 F. Supp. at 546. In an interpleader action,  
 15 an injunction is proper where it will prevent the “multiplicity of actions” and reduce  
 16 “the possibility of inconsistent determinations” to the funds at stake. *Sotheby's Inc. v.*  
 17 *Garcia*, 802 F. Supp. 1058, 1066 (S.D.N.Y. 1992). Indeed, an interpleading  
 18 stakeholder should not face the expense of defending twice the rights to the stake and  
 19 should be protected from double liability. *Lee v. West Coast Life Ins. Co.*, 688 F.3d  
 20 1004, 1009 (9th Cir. 2012); *Mack v. Kuckenmeister*, 619 F.3d 1010, 1024 (9th Cir.  
 21 2010). In fact, the United States Supreme Court has identified a specific example  
 22

23  
 24 <sup>2</sup> The Anti-Injunction Act, 28 U.S.C. § 2283, states “A court of the United States may  
 25 not grant an injunction to stay proceedings in a State court except as expressly  
 26 authorized by Act of Congress.” This statute does not prohibit a federal court from  
 27 staying a state proceeding pursuant to Section 2361 because Section 2361 is an act of  
 28 congress. *Lorillard Tobacco Co. v. Chester*, 589 F.3d 835, 844 (6th Cir. 2009).

<sup>3</sup> A court can issue an injunction under Section 2361 without consideration of the rules  
 provided by Fed. R. Civ. P. 65. See Fed. R. Civ. P. 65(e); *Star Ins. Co.*, 273 F. Supp.  
 2d at 42.

1 which warrants the issuance of an injunction. *See State Farm Fire & Casualty Co. v.*  
2 *Tashire*, 386 U.S. 523, 534 (1967). In *Tashire*, the Court stated:

3       There are situations...where the effect of interpleader is to confine the  
4       total litigation to a single forum and proceeding. One such case is where  
5       a stakeholder, faced with rival claims to the fund itself, acknowledges—  
6       or denies—his liability to one or the other of the claimants. In this  
7       situation, the fund itself is the target of the claimants. It marks the outer  
8       limits of the controversy. It is, therefore, reasonable and sensible that  
9       interpleader, in discharge of its office to protect the fund, should also  
10      protect the stakeholder from vexatious and multiple litigation. In this  
11      context, suits sought to be enjoined are squarely within the language of  
12      28 U.S.C. § 2361.

13 *Id.*; see also *Pruco Life Ins. Co. v. Martin*, 2011 U.S. Dist. LEXIS 92424, \*10  
14 (D. Nev. 2011). However, in *Tashire*, the Court held that an injunction was not  
15 appropriate because there were multiple and dissimilar avenues for relief. *Id.* at  
16 534-535.

17       An injunction restraining other proceedings which could affect the policy  
18 limits is appropriate here because this action fits squarely within the example  
19 identified by the *Tashire* Court. Federal, the stakeholder, is facing thousands of  
20 rival claims to the policy limits. Because Caldera has advised claimants that its  
21 settlement proceeds are largely limited to available insurance funds, the Policies  
22 are the primary target of the Caldera Claims. Indeed, unlike *Tashire*, the  
23 Caldera Claims are all travelling the same avenue for relief, the policy limit,  
24 because Caldera has no other resources to remedy such claims. Further, Federal  
25 does not seek adjudication of the underlying Caldera Claims. Rather, this  
26 interpleader action only concerns resolving the rights to the policy limits. Thus,  
27 this action embodies the exact example the Supreme Court identified in *Tashire*  
28 which warrants imposing a stay.

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1           Additionally, an injunction will uphold the purpose of Section 1335. For  
2           example, if this Court were to deny this motion, Federal would be required to  
3           defend potentially thousands of lawsuits. In fact, Federal would be subject to  
4           the pull of potentially numerous competing claims and potential allegations of  
5           bad faith and, once the policy limits are reached, the plaintiffs in these lawsuits  
6           would face the likelihood of obtaining no relief. Indeed, without the stay, it  
7           might not be possible to timely determine what the available policy proceeds  
8           are, creating singular confusion. It would be better for all parties to determine  
9           what the actual proceeds are after resolution of the coverage issues, instead of  
10          assuming that the bond amount represents the true available limit. Therefore,  
11          this Court should order a stay pursuant to Section 2361.

12           **C. AN INJUNCTION IS NECESSARY TO PREVENT A RACE TO**  
13           **JUDGMENT.**

14          As stated above, a court should issue an injunction to ensure equitable and  
15          consistent distribution of the funds at stake in an interpleader action. *See Texaco, Inc.*  
16          *v. Ponsoldt*, 118 F.3d 1367, 1370 (9th Cir. 1997) (The purpose of the interpleader  
17          statute is to ensure “straightforward determination of the priority of the claims as they  
18          existed at the time the interpleader became viable.”); *Sotheby's*, 802 F. Supp. at 1066.  
19          An injunction is especially necessary where a case involves the possibility of a small  
20          number of claimants “appropriat[ing] all, or a disproportionate slice, of a fund before  
21          fellow claimants are able to establish their claims, potentially leading to a race to  
22          judgment and unfairness to some claimants.” *Star Ins. Co.*, 273 F. Supp. 2d at 43.

23          Federal and Caldera are currently facing the concern identified in *Star Ins. Co.*  
24          Federal has exhausted a significant portion of the policy limits by defending a small  
25          portion of the Caldera Claims and funding one settlement. These efforts amounted to  
26          over \$5,300,000 in defense costs, while there still exists over two thousand claims and  
27          an extraordinary amount of potential liability. If the injunction is not granted, the  
28          policy limits will be reached long before all of the Caldera Claims are resolved. This

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1 means that several of the plaintiffs in the Caldera Claims will be left without any relief  
2 afforded them. In turn, plaintiffs will be encouraged to race to judgment in an attempt  
3 to ensure their personal relief. On the other hand, an injunction can ensure an orderly  
4 determination of what is left in policy limits and ensure that what is available isn't  
5 needlessly expended on solely defense costs. Indeed, the policy limits may be fully  
6 expended just by the cost of defense. Given the number of parties who may  
7 potentially be entitled to defense coverage under the Policies, it would not be  
8 inconceivable that the entire Policy proceeds would be exhausted well prior to the  
9 conclusion of the underlying litigation.

10 **D. OTHER ACTIONS CANNOT AFFORD THE PARTIES**  
11 **ADEQUATE RELIEF.**

12 Lastly, no other previously commenced action will afford Federal and Caldera  
13 effective relief. *Star Ins. Co.*, 273 F. Supp. 2d at 43 ("A request for an injunction may  
14 be refused...if a previously commenced action will afford the parties effective  
15 relief."). Caldera, with its defense funded by Federal, is currently litigating the  
16 Caldera Claims across the nation. However, none of these actions have joined all of  
17 the interested parties or have interpleaded the policy limits. Contrarily, through  
18 potential class certification and a stay, this action could adequately address the rights  
19 to the policy limits with respect to the claimants. Even more so, if this Court grants  
20 Federal's motion for class certification, it could ensure that unidentified prospective  
21 claimant's receive the proper relief as well.

22 ///

23 ///

24 ///

25 ///

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1 **IV. CONCLUSION**

2 For the reasons discussed above, Federal respectfully requests this Court issue  
3 an order: (1) staying any and all currently pending or future proceedings for a period  
4 of six months; (2) enjoining any person from instituting or prosecuting any lawsuit,  
5 arbitration or any other proceeding for a period of six months; (3) enjoining any  
6 person from levying or otherwise seeking payment on any settlement or judgment  
7 obtained, in any state or federal court, against any party insured or contractually  
8 indemnified under the Policies, and requiring that any liquidated claim be presented to  
9 this Court for potential payment.  
10

11 Dated: March 30, 2015

Respectfully submitted,

12 LOCKE LORD LLP  
13

14 By: /s/ Lilian M. Khanjian

15 Michael F. Perlis

16 Richard R. Johnson

Lilian M. Khanjian

17 *Attorneys for Claimant-Plaintiff*

18 *FEDERAL INSURANCE COMPANY*  
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12 Attorneys for Claimant-Plaintiff  
13 FEDERAL INSURANCE COMPANY

14 UNITED STATES DISTRICT COURT  
15 CENTRAL DISTRICT OF CALIFORNIA

16 FEDERAL INSURANCE COMPANY  
17  
18 Claimant-Plaintiff,  
19  
20 vs.

21 CALDERA MEDICAL, INC., and DENISE  
22 M. FLANIGAN, ROSIE JEAN BATES,  
23 TAMMY L. MCILROY, BRENDA DEYO,  
24 SUSAN STONE, KIMBERLY DURHAM,  
25 ELAINE TACK, SHARON PEER,  
26 ELIZABETH BAILEY, BARBARA COE,  
27 DOREEN ESPARZA, CLARA PERELKA,  
28 PEGGY GRUBBS, CONNIE  
WILLIAMSON, CHRISTINE MATHEWS,  
KATRINA BAKER, DAWN BURNHAM,  
NANCY ROBERTS, GLENDA THORNE,  
BENELLA OLTREMARI, PHYLLIS W.  
BROWN, JOANNE MONGEAU, SYBIL  
WASHINGTON, and CELINES RAMIREZ,  
and all others similarly situated

Claimants- Defendants.

CASE NO. 2:15-cv-00393-SVW-PJW

Honorable Stephen V. Wilson

**DECLARATION OF LILIAN  
KHANJIAN IN SUPPORT OF  
FEDERAL INSURANCE  
COMPANY'S MOTION TO STAY  
AND ENJOIN PROCEEDINGS**

**DATE: APRIL 27, 2015**

**TIME: 1:30 P.M.**

**PLACE: COURTROOM 6**

[Filed concurrently with: Notice of  
Motion and Motion to Stay and  
(Proposed) Order]

DECLARATION OF LILIAN KHANJIAN IN SUPPORT OF MOTION TO STAY AND ENJOIN PROCEEDINGS

1 I, Lilian Khanjian, declare as follows:

2 1. I am an attorney at the law firm of Locke Lord LLP, attorneys of record  
3 for Claimant-Plaintiff Federal Insurance Company ("Federal"), and am one of the  
4 attorneys representing Federal in this matter. The facts stated herein are true of my  
5 own knowledge, except as to those matters stated on information and belief, and, as to  
6 those matters, I believe them to be true. I submit this declaration in support of  
7 Federal's Motion to Stay and Enjoin Proceedings made pursuant to the Federal  
8 Interpleader Act, 28 U.S.C. § 2361.

9 2. Based on information received from Caldera Medical, Inc. ("Caldera"),  
10 through its counsel, our office is informed that there are at least 2,184 claimants who  
11 are either litigating claims or have tolled claims against Caldera in relation to its  
12 products ("the Caldera Claims").

13 3. Federal issued Life Science Insurance Program policies, each numbered  
14 Policy No. 7499-85-32 SFO, to Caldera for the following policy periods: (1) August  
15 1, 2008 to August 1, 2009 ("2008 Policy"); (2) August 1, 2009 to August 1, 2010  
16 ("2009 Policy"); (3) August 1, 2010 to November 1, 2011 ("2010 Policy"); and (4)  
17 November 1, 2011 to November 1, 2012 ("2011 Policy"). The 2008, 2009, 2010 and  
18 2011 Policies are collectively referred to herein as "the Policies" and have been  
19 attached as Exhibits A-D, respectively, to Federal's Complaint filed in this action.  
20 See Document No. 10 of the Docket.

21 4. Based upon information provided to our office, Caldera contends that, at  
22 most, \$25 million in total coverage among the Policies is available from which,  
23 according to the terms of the Policies, defense costs and settlements paid must be  
24 subtracted.

25 5. Based upon information provided to our office, Federal has funded to  
26 date over \$6,386,891 in defense and indemnity payments under the Policies, without  
27 having collected any deductible from Caldera, in connection with the Caldera Claims.  
28

7. On January 20, 2015, Federal filed an action in the nature of interpleader naming as defendants Caldera and twenty four (24) claimants individually and as class representatives of two proposed defendant classes. See Federal's Complaint filed in this action on January 20, 2015. See Document No. 1 of the Docket.

9. The underlying plaintiffs in the Transvaginal Mesh Medical Product Cases pending in Los Angeles County Superior Court, JCCP 4733, to which Caldera is a party, had requested a lift of the stay on litigation in that case.

10. On March 11, 2015, Judge William F. Highberger issued a tentative ruling lifting the stay on litigation. There will be further briefing on the tentative ruling, which Caldera and American Medical Systems, Inc. have opposed. A further hearing before Judge Highberger will be held on this issue on April 9, 2015.

11. Once the stay is lifted and litigation ensues in all respects, Caldera's defense costs will undoubtedly increase at an exceptionally rapid pace and Federal will be faced with having to satisfy its obligation to fund Caldera's defense.

12. Federal must also satisfy its obligations to pay for the defense of any other parties including, but not limited to contractual indemnitees, entitled to it under the Policies.

I declare the foregoing to be true and correct under the penalty of perjury of the laws of the United States of America.

Executed this 30th day of March 2015 in Los Angeles, California.

Lilian M. Khanjian



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13 FEDERAL INSURANCE COMPANY

14 UNITED STATES DISTRICT COURT  
15 CENTRAL DISTRICT OF CALIFORNIA

16 FEDERAL INSURANCE COMPANY

17 Claimant-Plaintiff,

18 vs.

19 CALDERA MEDICAL, INC., and DENISE  
20 M. FLANIGAN, ROSIE JEAN BATES,  
21 TAMMY L. MCILROY, BRENDA DEYO,  
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BENELLA OLTREMARI, PHYLLIS W.  
BROWN, JOANNE MONGEAU, SYBIL  
WASHINGTON, and CELINES RAMIREZ,  
and all others similarly situated

Claimant-Defendants.

CASE NO. 2:15-cv-00393-SVW-  
PJW

Honorable Stephen V. Wilson

**[PROPOSED] ORDER  
GRANTING FEDERAL  
INSURANCE COMPANY'S  
MOTION TO STAY AND  
ENJOIN PROCEEDINGS**

**DATE: APRIL 27, 2015**

**TIME: 1:30 P.M.**

**PLACE: COURTROOM 6**

[Filed concurrently with: Notice of  
Motion and Motion to Stay and  
Declaration of Lilian M. Khanjian]

[PROPOSED] ORDER GRANTING FEDERAL INSURANCE COMPANY'S MOTION TO STAY

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1 The Court, having considered Claimant-Plaintiff Federal Insurance Company's  
2 ("Federal") Motion to Stay and Enjoin Proceedings, as well as the arguments of the  
3 parties and the papers submitted, hereby GRANTS the Motion to Stay and Enjoin  
4 Proceedings.

5 Accordingly, the Court ORDERS as follows:

6 1. A stay of all litigation and proceedings in any State and/or United States  
7 Court against any party insured or contractually indemnified under the insurance  
8 policies issued by Federal to Caldera Medical, Inc., Policy No. 7499-85-32 SFO (the  
9 "Policies") for a period of six months;

10 2. An injunction preventing any and all potential claimants, including but  
11 not limited to those with tolling agreements, from instituting or prosecuting any  
12 lawsuit, arbitration or any proceeding against any party insured or contractually  
13 indemnified under the Policies for a period of six months; and,

14 3. An injunction preventing any and all plaintiffs and/or claimants from  
15 levying or otherwise seeking payment on any settlement or judgment against Federal,  
16 any party insured or contractually indemnified under the Policies, and requiring that  
17 any liquidated claim be presented to this Court for potential payment.

18  
19 IT IS SO ORDERED.

20  
21  
22 Dated: \_\_\_\_\_

23 \_\_\_\_\_  
U.S. DISTRICT JUDGE

## EXHIBIT 3

Federal's August 5, 2015 Supplemental Submission In  
Support of Motion to Stay

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Attorneys for Claimant-Plaintiff  
FEDERAL INSURANCE COMPANY

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

FEDERAL INSURANCE COMPANY  
Claimant-Plaintiff,

vs.

CALDERA MEDICAL, INC., and  
DENISE M. FLANIGAN, ROSIE JEAN  
BATES, TAMMY L. MCILROY,  
BRENDA DEYO, SUSAN STONE,  
KIMBERLY DURHAM, SHARON PEER,  
ELIZABETH BAILEY, BARBARA COE,  
DOREEN ESPARZA, CLARA PERELKA,  
PEGGY GRUBBS, CONNIE  
WILLIAMSON, CHRISTINE  
MATHEWS, KATRINA BAKER, DAWN  
BURNHAM, NANCY ROBERTS,  
GLENDA THORNE, BENELLA  
OLTREMARI, PHYLLIS W. BROWN,  
JOANNE MONGEAU, SYBIL  
WASHINGTON, and CELINES  
RAMIREZ, and all others similarly situated

Claimants- Defendants.

CASE NO. 2:15-cv-00393-SVW-PJW

Honorable Stephen V. Wilson

**SUPPLEMENTAL SUBMISSION IN  
SUPPORT OF THE NOW-  
UNOPPOSED MOTION TO STAY  
AND ENJOIN PROCEEDINGS**



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1 In connection with the now-unopposed Motion to Stay and Enjoin Proceedings  
2 (“the Motion”) filed on March 30, 2015, Federal Insurance Company hereby provides  
3 this Supplemental Submission, to notify the Court regarding a new development in an  
4 underlying case.

5 On August 3, 2015, the Plaintiff in *Stephanie M. Guirola v. Caldera Medical,*  
6 *Inc., Biomedical Structures, LLC and 25 Centre, LLC* currently pending in the  
7 Southern District of Mississippi, Southern Division, Case No. 1:15cv88JTM, a case  
8 which would be subject to the stay if granted, filed a Motion for Limited Discovery.  
9 See attached **Exhibit A**. The fees and expenses incurred in connection with this  
10 motion and with any discovery that may result will erode the current funds set aside  
11 for the conditional settlement.

12 As stated in the August 3, 2015 Supplemental Submission filed in this case, to  
13 the extent the underlying litigation and proceedings are not stayed, and additional fees  
14 and expenses incurred exceed the specified reserves set aside by the settlement, the  
15 settlement could be terminated.

16 This Supplemental Submission is joined by Caldera and counsel representing  
17 2,184+ Claimants. The Parties therefore reiterate their request that the Court stay and  
18 enjoin the litigation and proceedings as detailed in the August 3, 2015 Supplemental  
19 Submission.

20  
21 Dated: August 5, 2015

Respectfully submitted,

22 LOCKE LORD LLP

23 By: /s/ Lilian M. Khanjian

24 Michael F. Perlis

25 Richard Johnson

26 Lilian M. Khanjian

27 *Attorneys for Claimant-Plaintiff*

28 *FEDERAL INSURANCE COMPANY*

# EXHIBIT A

IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF MISSISSIPPI  
SOUTHERN DIVISION

STEPHANIE M. GUIROLA

PLAINTIFF

VERSUS

CIVIL ACTION NO.: 1:15cv88JTM

CALDERA MEDICAL, INC.,  
BIOMEDICAL STRUCTURES, LLC  
AND 25 CENTRE, LLC

DEFENDANTS

**PLAINTIFF'S MOTION FOR LIMITED DISCOVERY NECESSARY TO RESPOND  
TO THE PREEMPTION ISSUES RAISED IN DEFENDANT BIOMEDICAL  
STRUCTURES, LLC'S MOTION TO DISMISS COMPLAINT**

The Plaintiff, Stephanie M. Guirola, files this Motion for Limited Discovery Necessary to Respond to Defendant Biomedical Structures, LLC's Motion to Dismiss Plaintiff's Second Amended Complaint and the simultaneously filed Memorandum of Law [Docs. 31 and 32] to-wit:

1. The Defendant Biomedical Structures, LLC (Biomedical) has moved to dismiss the Plaintiff's claims against Biomedical predicated on the Biomaterials Access Assurance Act ("the Act"), 21 U.S.C. § 1601 *et seq.* Biomedical alleges that claims asserted against it are preempted under state law and certain federal laws and forecloses any claim against Biomedical as a component part (mesh) manufacturer of the subject Desara Sling transvaginal mesh implant marketed and sold by Defendant Caldera Medical, Inc.

2. The Plaintiff is handicapped in her ability to respond to the Motion to Dismiss. Certain critical issues have been raised in Biomedical's Motion and

Memorandum that are impossible for the Plaintiff to address without first conducting discovery on those limited issues. Biomedical's exact status under the Act is unknown at this time, so the Plaintiff cannot effectively assert a counter position. However, there is evidence in Biomedical's marketing materials which suggests that Biomedical may not be protected by the Act.

3. There is no question that under the Act a supplier may be liable if it supplied defective component parts or raw materials or failed to meet contractual obligations with the chief manufacturer. The Plaintiff must be permitted to conduct discovery to determine whether or not Biomedical supplied defective mesh to Caldera or failed in its contractual obligations to Caldera or if the contractual obligations imposed a duty on Biomedical to do more than just supply a component part.

4. The Act specifically provides that if a defendant files a motion to dismiss on the grounds that it did not furnish raw materials or component parts for the implant that failed to meet applicable contractual requirements or specifications, the court may permit discovery limited to issues relevant to the pending motion to dismiss. *See* 21 U.S.C. § 1605(c)(1)(B)(i).

5. The Plaintiff requests that the Court grant limited discovery on the issues set forth in the Motion pertaining to the Act as follows:

- a. Twenty (20) interrogatories directed to Caldera and twenty (20) interrogatories directed to Biomedical;

- b. Twenty (20) requests for production directed to Caldera and twenty (20) requests for production directed to Biomedical;
- c. One (1) deposition of the F.R.C.P. 30(b)(6) representative of Caldera and one (1) deposition of the F.R.C.P. 30(b)(6) representative of Biomedical, if needed;
- d. Granting the Plaintiff ninety (90) days to conduct the requested limited discovery;
- e. Once the ninety (90) day discovery is complete, the Plaintiff requests fourteen days (14) to file her response and memorandum in opposition to the motion.

RESPECTFULLY SUBMITTED, this the 3rd day of August, 2015,

STEPHANIE GUIROLA, PLAINTIFF

OWEN, GALLOWAY & MYERS, P.L.L.C.

BY: /s/ JOE SAM OWEN (MS Bar No. 3965)

**CERTIFICATE OF SERVICE**

I, JOE SAM OWEN, of the law firm Owen, Galloway, & Myers, P.L.L.C., do hereby certify that I have this date electronically filed the foregoing Motion For Limited Discovery Necessary To Respond To The Preemption Issues Raised In Defendant Biomedical Structures, LLC's Motion To Dismiss Complaint with the Clerk of the Court using the ECF system, which served a copy to all counsel of record.

SO CERTIFIED, this the 3rd day of August, 2015.

/s/JOE SAM OWEN

JOE SAM OWEN (MS Bar No. 3965)  
ASHLEY C. WRIGHT (MS Bar No. 104375)  
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## EXHIBIT 4

August 7, 2015 Minute Order

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. 2:15-cv-393-SVW-PJW Date August 7, 2015

Title Federal Insurance Co. v. Caldera Medical Inc., et al

---

Present: The Honorable STEPHEN V. WILSON, U.S. DISTRICT JUDGE

Paul M. Cruz

N/A

Deputy Clerk

Court Reporter / Recorder

Attorneys Present for Plaintiffs:

Attorneys Present for Defendants:

N/A

N/A

**Proceedings:** IN CHAMBERS OMNIBUS ORDER RE: CONDITIONAL SETTLEMENT

1. In light of the joint request for a stay by Federal, Caldera, and the individual claimants, the Court **GRANTS** the motion to stay and enjoin proceedings. (Dkts. 178, 180.)
2. The Court **DEFERS** resolution of Federal's motion for class certification.
3. The individual claimant defendants are **ORDERED** inform the Court in writing no later than August 14, 2015, at 5:00 p.m. whether they intend to withdraw the motions to quash service, defer consideration of those motions, or continue to seek immediate resolution of those matters.

Initials of Preparer

                     :                       
PMC